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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERENCE

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REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

Contribution of the Committee on Economic, Social and Cultural Rights to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Note by the Secretary-General

1. In its resolution 1999/78 of 28 April 1999, the Commission on Human Rights invited United Nations bodies and mechanisms dealing with the question of racism, racial discrimination, xenophobia and related intolerance to participate actively in the preparatory process of the World Conference (para. 61). The General Assembly at its fifty-fourth session also requested human rights mechanisms to assist the Preparatory Committee and to undertake reviews and submit recommendations concerning the World Conference and the participation therefore to the Preparatory Committee, through the Secretary-General, and to participate actively in the Conference (resolution 54/154, para. 37). Accordingly, a contribution has been received from the Committee on Economic, Social and Cultural Rights to the preparatory process for the World Conference, in the form of the Committee's General Comments Nos. 11 and 13 on the right to education, including primary education (articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights), pursuant to the Committee's decision at its twenty-first session, held from 15 November to 3 December 1999 in Geneva.

2. There is a close relationship between, on the one hand, racism, racial discrimination, xenophobia and related intolerance and, on the other hand, the marginalization and social exclusion of disadvantaged and vulnerable groups. The imperative of eliminating social exclusion and marginalization animates the International Covenant on Economic, Social and Cultural Rights as well as the evolving jurisprudence of the Committee on Economic, Social and Cultural Rights. Accordingly, the Covenant - and the developing practice of the Committee - are tools for tackling social exclusion and racism. The full realization of the substantive rights enumerated in the Covenant - the rights to education, housing, food, employment, and so on - will go a long way towards the elimination of racism, racial discrimination, xenophobia and related intolerance.

3. This submission, however, has a narrower focus: the right to education as set out in articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights. It is universally recognized that education has a pivotal role to play in the struggle against racism and related intolerance. In a recent resolution, the General Assembly "strongly underlines the importance of education as a significant means of preventing and eradicating racism and racial discrimination ...".[1] According to the report of the working group established by the Commission on Human Rights to review and formulate proposals for the World Conference against Racism, a point emerging from debate within the working group was that "stress [is] to be laid on education and consciousness-raising as essential means for combating racism and racial discrimination".[2] As a member of the Committee on the Elimination of Racial Discrimination puts it: "It is of great importance that teaching materials and teaching aids be made widely available to promote teaching, training and educational activities against racism, racial discrimination, xenophobia and anti-Semitism so as to counteract prevailing or emerging prejudices in this area".[3]

4. Given the importance of education in the struggle against racism and racial discrimination, this submission draws attention to the right to education which, for the last 18 months, has been a focus of the work of the Committee on Economic, Social and Cultural Rights. In particular, the submission highlights General Comment No. 13, adopted in December 1999, on article 13 of the Covenant (E/C.12/1999/10) and the companion General Comment No. 11, adopted in May 1999, on article 14 of the Covenant (E/C.12/1999/4).[4]

5. General Comments Nos. 13 and 11 emerged from a long process of consultation which included the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund, the United Nations Development Programme, the International Labour Organization, Katarina Tomasevski (Special Rapporteur of the Commission on the right to education), Mustapha Mehedi (member of the Sub-Commission on the Promotion and Protection of Human Rights), other independent experts and numerous non-governmental organizations. The process was informed by one of the Committee's days of general discussion (30 November 1998), three workshops organized by the non-governmental community, and many informal consultations with a wide range of actors. Significantly, General Comment No. 13 explicitly draws upon and, in appropriate cases, incorporates relevant international norms, such as passages from the Convention on the Rights of the Child, which have been elaborated since the Covenant was adopted by the General Assembly in 1966. Further, it explicitly takes account of jurisprudence emerging from other human rights treaty bodies, such as the Human Rights Committee and Committee on the Rights of the Child.

6. Article 13 of the Covenant is "the most wide-ranging and comprehensive article on the right to education in internatonal human rights law".[5] In its turn, General Comment No. 13 is the most detailed and authoritative commentary on article 13 currently available. After some introductory paragraphs, the General Comment focuses on the normative content of article 13, some of the general and specific obligations of States parties arising from the article and some illustrative violations of article 13, and it ends with some brief remarks about the obligations of non-State actors in the context of article 13.

7. This submission attempts to analyse neither article 13 nor its General Comment. Instead, it briefly highlights some of the passages from article 13 and General Comment No. 13 which explicitly bear upon racism and race discrimination:

(a) Article 13 (1) sets out the aims and objectives towards which all education must be directed. According to article 13 (1), "education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms". Further, "education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups";

(b) "The prohibition against discrimination enshrined in article 2 (2) of the Covenant is subject to neither progressive realization nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination." (General Comment No. 13, para. 31);

(c) "The adoption of temporary special measures intended to bring about de facto equality for men and women, and disadvantaged groups, is not a violation of the right to non-discrimination with regard to education, so long as such measures do not lead to the maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved." (General Comment No. 13, para. 32);

(d) "States parties must closely monitor education - including all relevant policies, institutions, programmes, spending patterns and other practices - so as to identify, and take measures to redress, any de facto discrimination. Educational data should be disaggregated on the prohibited grounds of discrimination." (General Comment No. 13, para. 37);

(e) "[T]he form and substance of education, including curricula and teaching methods, has to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents ... subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State." (General Comment No. 13, para. 6 (c));

(f) "[E]ducation has to be flexible so it can adapt to the needs of changing societies and communities, and respond to the needs of students within their diverse social and cultural settings." (General Comment No. 13, para. 6 (d));

(g) General Comment No. 13 quotes with approval from the the World Declaration on Education for All (Jomtien, Thailand, 1990): "Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community." (General Comment No. 13, para. 9);

(h) "A fellowship system established under article 13 (2) (e) shall be read with the Covenant's non-discrimination and equality provisions and, accordingly, "should enhance equality of educational access for individuals from disadvantaged groups." (General Comment No. 13, para. 26);

(i) "Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty [to establish private educational institutions] does not lead to extreme disparities of educational opportunity for some groups in society." (General Comment No. 13, para. 30);

8. This brief submission concludes with the opening words of General Comment No. 13: "Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities." Equally, the right to education is one of the vehicles by which the world can rid itself of racism, racial discrimination, xenophobia and related intolerance. Thus, one strategy for the elimination of racism is a renewed commitment, supported by the necessary resources, to realize the right to education as enshrined in the International Covenant on Economic, Social and Cultural Rights.

Notes

[1] Resolution 53/132 of 9 December 1998, para. 18.

[2] E/CN.4/1999/16, para. 52.

[3] Background paper prepared by Mr. Theodoor van Boven (E/CN.4/1999/WG.1/BP.7), para. 6 (y).

[4] Both general comments are available on the treaty bodies database on the Web site of the Office of the High Commissioner for Human Rights (www.unhchr.ch).

[5] General Comment No. 13, para. 2.